

ZBA Minutes – May 28, 2020  
ZONING BOARD OF APPEALS  
TOWN OF RIVERHEAD  
SUFFOLK COUNTY  
RIVERHEAD, NEW YORK  
(631) 727-3200

These minutes are a summary of the May 28, 2020 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY. Applicants and the public contacted through the Zoom conferencing application.

**PRESENT:**

Leroy Barnes  
Otto Wittmeier  
Frank Seabrook  
Ralph Gazzillo  
Fred McLaughlin, Chairman  
Dawn Thomas, Counsel

**ABSENT:**

**CALL TO ORDER**

Mr. McLaughlin called the meeting to order at 7:00 p.m. and stated, in these extraordinary times, I'd like to welcome you to the May 28<sup>th</sup> meeting of the Zoning Board of Appeals. First off we have a request for an extension.

**REQUEST FOR EXTENSION**

**Appeal No. 2017-014 – Kenneth Schroder – 48 Willow Street, Aquebogue, SCTM No. 600-87-1-14 - for** variances to and/or relief from the provisions of Chapter 301 Section 17 where the proposed front yard setback is 40 feet where the minimum require is 50 feet, the proposed side yard setbacks are 15.9 feet and 21 feet where the minimum required is 25 feet, the proposed combined side yard is 36.9 feet where the minimum required is 55 feet and the proposed rear yard setback is 41.8 feet where the minimum required is 60 feet.  
***(Request for 3rd extension thus expiring April 27, 2021)***

Mr. Barnes asked, motion to approve? Is that what we're doing? Mr. Murphree stated from the audience, no. Mr. McLaughlin clarified, motion to deny. Mr. Barnes responded, oh, I'm sorry.

A motion was made by Mr. Seabrook and seconded by Mr. Wittmeier that the extension be denied. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

**DETERMINATION OF THE ZONING BOARD OF APPEALS**  
**THIRD EXTENSION**

**APPEAL NO: 17-014**

**APPLICANT/PROPERTY OWNER:** Kenneth Schroder/Phoenix Home Buyers, LLC, 75 Broadway, Mastic, NY 11950

**RELIEF SOUGHT:** For variances to and/or relief from the provisions of Chapter 301, Section 17 where the proposed front yard is 40 feet (minimum required is 50 feet), the proposed side yard setbacks are 15.9 feet and 21 feet where the minimum required is 25 feet, the proposed combined side yard is 36.9 feet where the minimum required is 55 feet and the proposed rear yard setback is 41.8 feet where the minimum required is 60 feet.

**LOCATION:** 48 Willow Street, Aquebogue, NY

**SCTM#:** 600-87-1-14

**ZONING DISTRICT:** Residence B-40 (RB40)

**DATE OF HEARING:** April 13, 2017

**HISTORY:** This appeal was granted with conditions on April 13, 2017 with a determination dated April 27, 2017, thus expiring April 27, 2018. Mr. Kenneth Schroder did receive the first one year extension, nunc pro tunc, on May 24, 2018, thus expiring April 27, 2019. In correspondence dated April 8, 2019, Mr. Schroder did request a second one-year extension, which was granted on April 11, 2019. In correspondence dated April 16, 2020, Mr. Schroder again requested in writing a third and final extension, thus expiring April 27, 2021.

The Zoning Board has determined that the applicant's original approval was based upon the submission of a survey (prepared by Nathan Taft Corwin II, Land Surveyor, and dated July 1, 2016) which did not delineate existing Town of Riverhead designated wetlands and was therefore inaccurate. Thereafter, on March 13, 2019 the Town Conservation Advisory Council determined that the application should not be approved due to the existence of Town of Riverhead designated wetlands on the subject property and not shown on the aforementioned survey. Accordingly, because the application and subsequent approval were based upon inaccurate information, and because the applicant has not received the approval of the Conservation Advisory Council, the Zoning Board of Appeals cannot extend the approval as requested.

A motion was made by Mr. McLaughlin and seconded by Mr. Wittmeier that the aforementioned extension be DENIED:

The motion was duly adopted by all members present:

MR. WITTMEIER:	AYE
MR. SEABROOK:	AYE
MR. BARNES:	AYE
MR. GAZZILLO:	AYE
MR. MCLAUGHLIN:	AYE

I hereby certify that the foregoing is a true copy of a motion duly adopted on the 28th<sup>th</sup> day of May 2020, and of the whole thereof.

Dated:

Very truly yours,

Fred McLaughlin, Chairman  
ZONING BOARD OF APPEALS

## PUBLIC HEARINGS

**Appeal No. 2020-005 – Suffolk Foot & Ankle – 976 Roanoke Avenue, Riverhead – SCTM No. 600-107-1-56 – Bus PB Zoning** - for variances and/or relief from Chapter 301 Section 231 E(3) where proposed two-way drive aisle is 12' and minimum required is 24'; Section 236 (A)(2) where proposed landscaped buffers with neighboring residential properties to the south is 6' and to the east is 6.2' and minimum required is 10'; Section 249 (F)(4) where proposed sign is >1 ft. from front property line and minimum required is 15'.

Mr. McLaughlin stated, good evening, Mr. Butler. You're the attorney for the appeal? Mr. Butler asked, I'm sorry; what was that, Chairman? Mr. McLaughlin repeated, you're the attorney? Mr. Butler replied, that is correct; yes, I am. Mr. McLaughlin stated, okay; you have the floor. Mr. Butler replied, great, thank you. I'm just going to share my screen, if that's okay? Mr. McLaughlin replied, you're fine. Mr. Butler responded, okay. Oh, wait...it's disabled. Mr. McLaughlin stated, no, we gotcha. We hear you. Mr. Murphree asked, Fred, who does he want us to admit? We need the names. Mr. Butler responded, Phil Butler with Farrell Fritz, 100 Motor Parkway in Hauppauge. Mr. Murphree stated, Phil, you need to tell us who you want us to admit. Mr. Butler replied, okay. So I provided to the board in advance to the hearing, and I was gonna share it on my screen, a packet of materials. Jeff, do you have that? Mr. Murphree repeated, he's got to tell us who other consultants he wants to admit. Ms. Collins explained, he needs access for his file. Mr. McLaughlin asked, who else do you have that's going to speak tonight? Mr. Butler replied, Danielle Pontieri of JPCE Engineers; she is the engineer on the project. Mr. McLaughlin responded, okay. Next? Mr. Butler stated, that is it for the applicant representatives tonight. Mr. McLaughlin stated, okay. So, now you have the floor. Let's hear your appeal. Mr. Butler continued, I provided the board in advance of the meeting a packet of materials. It consists of the denial letter of December 31, 2019, an aerial of the area where the property is located. It's on Roanoke Ave; the cross streets are Duryea Street and Northern Parkway. The most recent survey of the property showing the existing conditions. You then have the site plans and the landscape plan prepared by JPCE. There are some photographs of the property existing conditions, and then finally, there's a list of other signs on Roanoke Avenue that are within 15 feet from the property line which is relevant for purposes of one of the variances that we're seeking. To back up, we're before you tonight seeking variances in connection with a project to open a new medical office on the subject property which is located at 976 Roanoke Avenue in the Bus PB district. We require a 12 foot wide driveway variance whereas 24 feet is required. We require variances for undersized landscape buffers, and finally, we require a signage variance for a sign that would be located less than one foot from the sidewalk whereas 15 feet is required. The property is 0.22 acres or roughly 9600 sf of land. It is improved with a 1.5 story building that predates zoning. It also has existing landscaping and parking area. It is connected to the Riverhead sewer district, so we're not concerned about septic issues. In 2000, the Town Board approved a resolution for conversion of the structure from a single family residence to an office. There is a certificate of compliance for the building dated November 17, 2000. The last use of the property, which I believe ended in 2017, was East End Wellness Center which was a medical office use which is permitted under the existing zoning. The applicant acquired the property in 2019; the property was already vacated. We went before the Planning Board for an administrative site plan review which is required in order to utilize the second story of the structure for administrative offices and also because of some clearing that was done on the property without prior approval. My applicant is an orthopedic surgeon who is expanding his practice; he already practices in the Town of Riverhead but does not have a local office to make appointments with his clients. So he acquired the property for that purpose, to see his clients. There will be no inpatient procedures of any kind done there; it is strictly appointment only. Hours of operation are anticipated to be Monday-Friday 9 a.m. to 5 p.m. Typically, there would be three employees on the site including the physician who's present there for the day. As part of the application, we're obviously seeking approval to use the property for the new medical office use, and it includes extended and code compliant parking, landscaping, new drainage and lighting, and an ADA compliant access ramp. Per staff comments received back in February, the landscape plan that we provided to you is actually outdated in the sense that the arborvitae and Pennsylvania sedge that are shown around the southern and eastern perimeter of the site will be arborvitae only, which provides more screening. We figured we would change that after the meeting with this board, since part of what we are seeking is landscape buffer relaxation. As the board knows, there's a factor test that needs to be approved to grant area variances. We submit to you that we meet the standards for those variances in the following ways. Whether there will be a detriment to the character of the neighborhood or adjacent properties; we do not believe that is the case. The property as it existed prior to my client's ownership was somewhat under kept. The landscaping primarily consisted of overgrowth and ivy that had overtaken the front of the property. The structure itself had not been updated in many years. My client is looking to renovate the structure, renovate the property, install code compliant parking, drainage, lighting, and those things will all benefit the appearance of the structure which only benefits the neighborhood. Whether there's another method available to my applicant, with respect to the driveway, the answer is, frankly, no. The driveway cannot be expanded due to the width of property and the location of the building. It would not be possible without knocking part of it down, and frankly a 24 foot wide driveway would

be 40% of the lot width. So, it's not really feasible. The reduced landscape buffers are necessary to accommodate the required parking which I believe there are nine stalls. Finally, with respect to the sign, it would be three parking stalls in the front of the property, and there's really nowhere else to put the sign. It's worth noting to the board that the prior sign that was removed which was there when East End Wellness was on the site...that was in roughly the same location which was within the 15 foot setback required for signage. I should also note that having driven down Roanoke Avenue very recently, within the PB district, there are roughly 12-14 signs that I saw that were within the 15 feet, about 9 of which were within 5 or fewer feet from the sidewalk. So, to the point of character of the neighborhood, I don't think a sign that is in close proximity to the property line would be out of character with this particular area. Just so you know, I drove the stretch of Roanoke Avenue between the traffic circle up on 58 down to the railroad tracks which is pretty much the PB district. The vast majority of the properties along that stretch are PB. Whether the variances are substantial, mathematically, arguably, they are substantial; however, case law tells us that the real question is whether the impact is substantial in the context of the impact under all of the circumstances. Again, I go back to the fact that the variances that we're requesting are in connection with a project that will improve the overall appearance and function of the property which is a benefit to the neighborhood, not a detriment. Whereas mathematically we may be looking at large variances, particularly with the signage and perhaps with the landscape buffers, the detriment associated with them is negligible. Whether there's a detriment to the environment, no, once again. We're bringing everything up to code, so particularly with respect to landscaping and drainage...these are benefits because currently the lighting on the property is not code compliant, and for what we know the drainage structures in the parking are outdated and do not necessarily capture 100% of the stormwater that is on the site. Finally, is the need for the variance self-created? No, in the sense that my client acquired the property with many of these conditions already existing. The need for the variances is created by the fact that we need to bring the property up to code, creating additional parking and upgrading the landscaping. So, with that being said, I think we meet the criteria for the variances, and I welcome the board's comments. Before I get to that though, I guess I'll ask...Danielle, do you have anything that should be added? Danielle, are you there? Mr. McLaughlin replied, we're getting her on now.

Mr. McLaughlin asked, any of the board members have any questions for Mr. Butler while we have him on? Mr. Barnes asked, just one question. I was wondering...how big is the sign gonna be size-wise? Mr. Butler replied, we do not have any plans for the sign just yet, but the intent would be to make the sign code compliant other than the location. Mr. Barnes responded, okay, so you're gonna be code compliant, so the question I have is...I'm just worried about visibility when you come out of the property. Will it block any of the oncoming traffic for the person in the vehicle exiting the property? Is there gonna be a visibility problem? Mr. Butler stated, I suppose what we could do is put the sign somewhere along the frontage whereas enough distance away from the driveway so you wouldn't have the site issue. We have what I guess you'd consider a proposed location, but we can always revise that to move it farther to the south so that it doesn't create a visual hazard. One of the recommendations that staff provided was that we could possibly put a tree somewhere near the southeast corner of the property, but they did say that's not necessarily viable, so if we don't have to put a tree there, we could always put a sign there and that way we have visibility for the sign, and we wouldn't have a site distance problem for the driveway. Either way, we would anticipate needing the variance that we're requesting. Mr. Seabrook added, you would help with the site issue that Leroy is mentioning if you rotated the sign 90 degrees so that it was parallel to the road as opposed to perpendicular to the road. Being it's perpendicular to the road, that creates the visual...potential visual hindrance, but if you had it parallel to the road, you really only have one side of the sign that's facing the road; I understand that, but I think it would be maybe visually better for the people exiting the parking lot. Mr. Butler responded, I'm not immediately opposed to that. The only thought that I would have then is are you reducing visibility for the sign since traffic has a north-south direction, which I guess is the point you made that one side is visible to traffic, but Roanoke Avenue isn't a particularly high speed area, so I assume that it wouldn't create an overwhelming issue for the sign. Mr. Barnes noted, well, I guess the town can deal with that when the application is made and submitted. Whoever's in charge of that can take a look at it and see if it's gonna be a problem or not. Mr. Butler replied, right. I'm sure we can make that work. Mr. Barnes stated, thank you. Mr. McLaughlin asked, anyone else on the line that would like to comment on this? Mr. Murphree (reviewing the Zoom virtual "waiting room" with a town IT professional) asked, Phil, will Courtney Riley from VHB be on this application? Mr. Butler replied, no, Courtney will be joining for Brixmor. Mr. Murphree replied, okay, great. Mr. Murphree asked, Helen Towey? Is that one of your consultants? Mr. Butler replied, no. Mr. Murphree asked,

Twersky? Mr. Butler answered, Reuben Twersky is the applicant for Brixmor. Mr. Murphree noted, we have someone with a phone number but no name, and Danielle muted herself, Phil. Ms. Pontieri replied, I'm on. Mr. Butler asked, Danielle, you heard my presentation? Ms. Pontieri responded, no, I think I was only let in a couple of minutes ago; I was only hearing stuff about the sign. Mr. Butler replied, oh, okay. I did mention for them the fact that the landscape plan...it needs to be revised because we are removing the Pennsylvania sedge and replacing it with full arborvitae screening along the southern and eastern property lines. Were there any other changes since the last submission that we need to bring them up to speed on? I think everything else I submitted to them is current. Ms. Pontieri replied, no, I think you're correct. Everything should be current that was submitted. Mr. Butler stated, okay. I only asked Danielle to be on here today just in case there were any questions that I couldn't field, so to that extent, does the board have any questions? I'll address them. I'll defer to Danielle if there's anything I can't answer. That's really what I have for the board today, so I respectfully request that we get the variances that we've asked for. If the board wants to put some condition on the granting of the signage variance that we need to finalize the orientation and dimensions of the sign at the time we put in the application, I'm comfortable with that. That being said, I defer to the board. Mr. McLaughlin stated, hold on, Mr. Butler; we're just... Mr. Wittmeier asked the board members, we don't have any questions, do we? Mr. Gazzillo replied, I don't; I'm good with it.

Mr. Murphree stated, Fred, we're going to ask who they're calling in about, so what we'd like to do is admit them one by one and ask them what they're calling in about. If they're not calling about this one, we'll put them back in the waiting room. If they want to talk about this one, we'll admit them in. Mr. McLaughlin stated, fine. Hold on there, Mr. Butler.

Mr. McLaughlin stated, hello, good evening. Unidentified caller responded, good evening. Mr. Murphree asked, which application are you calling about? Caller replied, Brixmor. This is Courtney Riley, VHB. Mr. Murphree replied, okay, Courtney, we're gonna put you back in the waiting room for a minute. (Addressing the board) That's it for this application. Mr. McLaughlin stated, alright. Since there's nobody else to be heard on this matter, then we will have a vote.

A motion was made by Mr. Wittmeier and seconded by Mr. Seabrook that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2020-005

SUMMARY: Medical Office Site Plan Alterations

APPLICANT/PROPERTY OWNER: Kiki Mimi Assets LLC, 1 Equestrian Ct, Huntington, NY 11743

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 231 E(3) where proposed two-way drive aisle is 12' and minimum required is 24'; Section 236 (A)(2) where proposed landscaped buffers with neighboring residential properties to the south is 6' and to the east is 6.2' and minimum required is 10'; Section 249 (F)(4) where proposed sign is >1 ft. from front property line and minimum required is 15'.

LOCATION: 976 Roanoke Ave, Riverhead

SCTM#: 600-107-1-56

ZONING DISTRICT: Professional Business (Bus PB)

**SIZE OF PROPERTY/REQUIRED SET BACKS:** The property is approximately 9,599.79 sq. ft. or 0.22 acres. Minimum lot area is 40,000 square feet. Minimum lot width at front street is 50 feet. Maximum building lot coverage without sewer – N/A. Maximum building lot coverage with sewer is 30%. Maximum building lot coverage with Transfer of Development Rights – N/A. Maximum impervious surface is 80%. Maximum height of buildings is 35 feet. Maximum floor area ratio without sewer – N/A. Maximum floor area ratio with sewer is 1.50. Maximum floor area ratio with Transfer of Development Rights – N/A. Minimum front yard depth is 50 feet. Minimum depth for each side yard of interior lots is 15 feet. Minimum combined depth for two sides of interior lots is 30 feet. Minimum depth of side yard facing side street of corner lots is 50 feet. Minimum combined depth for two sides of corner lots is 65 feet. Minimum rear yard depth is 50.

**DATE OF HEARING:** 5/28/2020

**INSPECTION DATES:** 5/20/2020, 5/23/2020

**SUFFOLK COUNTY PLANNING COMMISSION:** Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

**SEQRA:** The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(9) and does not require any further action pursuant to SEQRA.

**PLEASE TAKE NOTICE** that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

**HISTORY/PROPERTY FACTS**

1. Letter of Preexisting Use was issued on December 23, 1998 for one and three-quarter story frame single family residence.
2. Property received the following certificates of occupancy: (ZB5157) dated March 4, 1980 for tool shed; (ZB10560) dated October 1, 1987 for addition to residence (dormer); (ZB22219) dated November 17, 2000 for interior alteration and use of office space.
3. Property received certificate of compliance (ZB34712), use permit, for Holistic Wellness Center.
4. Site plan application was made to the Planning Department on December 3, 2019 for site alterations and interior floor plan alterations, and an application was made to the Zoning Board of Appeals on February 3, 2020. An updated denial letter was sent from the Zoning Officer on February 18, 2020.
5. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. One and one-half story frame building
    - ii. Driveway and parking area

**FINDINGS:** The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood; the proposed setbacks will have minimal impact on the property to the south as the existing fence will be screened with arborvitae. Additionally, proposed business hours are weekdays from 9:00 a.m. to 5:00 p.m. which also limits any disturbance to neighboring properties. The proposed setback for the sign is in keeping with existing sign setbacks of many businesses on Roanoke Avenue.
2. The requested variance is not substantial as the landscape buffer and signage setback are in keeping with the existing conditions in the community, and the applicant intends to screen the adjacent neighbor with arborvitae in conjunction with the existing fence, resulting in minimal impact to abutting parcels.

3. The benefit sought by the applicant for the drive aisle and landscape buffer setbacks cannot be achieved by some alternative means as the existing layout with proposed modifications is most conducive to site plan approval after review and department recommendations. The sign could be installed on the building itself; however, for better visibility, applicant prefers a freestanding sign as other businesses along Roanoke Avenue have been afforded.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the property is not within any environmentally sensitive areas, and the site's drainage and vegetation will both be upgraded.
5. The alleged difficulty that the property owner is experiencing was not self-created as the building has existed on the site in the same configuration for many years and was previously utilized as a medical office, a permitted use within Bus PB zoning.

The motion was made by Mr. Wittmeier and seconded by Mr. Seabrook, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: AYE MR. BARNES: AYE**  
**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**  
**MR. MCLAUGHLIN: AYE**

**This determination X was    was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

Mr. McLaughlin stated, okay, Clariss. Ms. Collins replied, Mr. Chairman, one question...I think Phil was trying to share his documents, and he was denied access. Was that was happening, Phil? Mr. Butler responded, yes. Mr. Kreymsborg (town IT professional) stated, see if it works now. Mr. Butler replied, there we go.

**Appeal No. 2020-008 – Brixmor Riverhead Development LLC – 1768 Old Country Road, Riverhead – SCTM No. 600-101.1-1-8 – DRC Zoning** - for a use variance/relief from Chapter 301 Section 106 where proposed hair removal salon (personal service) is not a permitted use.

Mr. Murphree asked, Phil, are you still there? Mr. Butler answered, yes, I am. Mr. Murphree asked, do you want your consultants admitted to the meeting at this time? Mr. Butler answered, yes, please. Should I announce them? Mr. Murphree replied, yes, please. Mr. Butler stated, we have Courtney Riley; she is with VHB. They're the engineers on this project. Reuben Twersky. Reuben is the project director and head of development and redevelopment for Brixmor. Mr. McLaughlin stated, okay, Mr. Butler, you have the floor. Mr. Butler continued, once again, Chairman, I submitted to the board prior to this meeting, some materials. I shared my screen so hopefully you can see. They consist of a denial letter from January, an aerial view of the project site, an overall site plan, which actually was provided for the Aspen Dental, which we received approval for I believe back in December, and it does show the tenant space that we're talking about for this application. I provided a narrative in support of the application which details our arguments why the use variance should be granted, which I will summarize for the board. I also provided an affidavit which in the materials I have with me today, it is notarized; it is from Nick Andreadis who is the director of leasing, regional director of leasing, from Brixmor, and then I have a marketing brochure that was utilized to market the subject premises which permitted use is primarily retail space. With that being said, again, we're seeking a use variance on this application to have a European Wax Center in the 1,500 sf that is remaining in building E-2 of the Shops at Riverhead. The shops overall are 41.55 acres of land with a 120,000 sf shopping center in addition to the 150,000 sf Costco. The property is split into two commercial units. The subject property that we're dealing with is condo unit 2 which is 26 acres, and that has



the 120,000 sf of new retail space on it. Building E-2 is a 5,000 sf outbuilding that is located in close proximity to Old Country Road. Overall, 115,000 sf of the 120,000 sf is tenanted and operating. As I mentioned before, this board previously granted a use variance application to locate an Aspen retail dentistry practice in 3,500 sf in the tenant space of building E-2 that was granted on December 19, 2019. Again, we are asking to put a personal service use in the remaining 1,500 sf. Just so the board is aware, the waxing center does include a retail component. They do sell waxing products and skincare products that are on display in the front of the store. The use variance is needed in this instance because we have been unsuccessful in identifying a zoning compliant tenant for the space. As we presented during the last application before the board, a long series of efforts has been made to market the property to zoning compliant tenants, particularly retail tenants, as it is a retail center. It was also marketed to banks and financial institutions; however, we have been unsuccessful in finding a tenant, and the only viable tenant that is in the picture at this time is European Wax. The standard for the board is to decide whether or not strict application of the zoning ordinance would inflict an unnecessary hardship on Brixmor; under the circumstances, I believe that is the case and that we qualify for a limited use variance for the space in question. First, can we realize a reasonable return on the investment? With respect to building E-2, the question has been and is still no. Unfortunately, when building E-2 was approved back in 2018, the intent was still to find retail tenants, and as you'll see in the marketing brochure that was provided, that is how it was marketed predominantly to all of the prospective tenants that were contacted through, I believe it was, eleven different retail brokerage companies. None of those panned out, unfortunately. I think since 2011, building E-2 has been marketed unsuccessfully to retail and banking institutions, so additional detail on the efforts that were made is provided in the affidavit from Nick Andreadis, so I won't go into full detail here, as I'm sure the board is already aware. Is the need for the use variance unique to our applicant? The answer to that is yes. The series of events that led to this, unfortunately, is that building E-2 was approved back in 2018 with the intent of having a retail tenant. Unfortunately, due to the downtrend caused by internet sales, there is increased competition for retail tenants, particularly quality retail tenants, and we have not been able to tenant building E-2. The permitted uses in this district, as the board probably knows are retail, banks, hotels, car dealers, warehouses, and wholesale clubs. The last four of which would not be viable uses for such a small facility. So, that really left us with retail and banks. Would the addition of this use in the district alter the essential character? No, I do not believe that is the case. We're talking about 1,500 sf in a 120,000 sf shopping center in the major commercial thoroughfare through the town. The addition of such a small use would not perceptively alter the character of this area, particularly given the fact that it's such a robustly diverse area of commercial uses, and again, it does by all appearances seem to be a retail store with some limited retail in the front and then the services being performed are done in the back half of the store. Finally, is the need for the use variance self-created? No, and again, the intent was to find a zoning compliant tenant for the property; however, we've been unsuccessful in doing so as a result of market trends. I should also add for the board that the prior use that was granted, as you may recall, was limited specifically to the tenant space, and it was specifically stated in the approval that the use variance granted was for building E-2 and the particular retail space that was the subject of the variance. If this application were granted, the applicant has no objection to a similar condition being placed on the granting of approval here. That being said, I think I'll turn it over to Reuben to provide any additional detail that I missed, and then following that I guess we'll take questions from the board and staff.

Mr. McLaughlin swore in Reuben Twersky, Director of Development for Brixmor Property Group. Mr. Twersky stated, I don't even know what my address is anymore. (All laughed) I can use my home address since that's my new home office, 33 Kenwood Drive, Woodcliff Lake, NJ 07677. I have to say this is now my third Zoom planning or zoning meeting, and it is quite interesting but it is nice to see the board members again. Thank you for having us, and thank you to the Town of Riverhead for doing the Zoom meetings to try to keep expediting businesses in your town. So, thank you. Not much has changed since the end of last year when we came to you for Aspen Dental. I think when we were there in December or even earlier there were a couple of questions of what is going to be the remaining of the space, and I think I mentioned then it was unknown. We were targeting a couple of tenants similar to the Aspen use, being more lifestyle retail oriented, being Aspen, being European Wax, which are not defined as retail but are still retail in nature. The way we classify them and then the way these tenants classified in the shopping centers they want to be in. They want to be in a full shopping center that lends to the foot traffic and complementary uses where they can go shopping and get their services done. It's light on parking; I think there's three or four treatment rooms per the 1,500 sf, and we're excited to still have an interested



tenant in today's times. I'm sure you're still reading all the news; most of the shops are closed. Most of the retailers are furloughed or laid off most of their real estate teams, and we're still talking to a couple of them, and they will want to be in our centers. We're excited that we still have the interest here. I think that's pretty much it on my end. Like I said, not much has changed in terms of the tenants trying to be in these types of centers. Mr. McLaughlin responded, okay, Reuben. Mr. Twersky added, the other variance would be for the minimum square footage, correct, Phil? Of the 1,500? Mr. Butler replied, yes, but that would be at a subsequent hearing. We'd have to get the use variance from the board first.

Mr. McLaughlin asked, any of the board members have any questions for Reuben? (There were no questions.) Who's up next that you have? Mr. Butler responded, we have Courtney Riley here from VHB in case the board had any questions about the site. The site has already been approved, frankly, so we just had her here in case there was a question that came up that for some reason we couldn't address, but really she's here for backup. So, I have nothing further to add at this time. I just wanted to say that given the pandemic and what I know a lot of retailers have seen since it happened and there was already a pattern toward internet sales. There's only been an increase in that obviously since all of the brick and mortar shops shut down, so to the extent that it was hard before for retailers to identify new quality tenants, if things don't reverse back to the way they were, it may only be more difficult. So, a more diversified robust client list, rather tenant list, is I think necessary in this instance to make sure that the new center is fully tenanted and viable. Mr. McLaughlin stated, okay, Mr. Butler. Any of the board members have any questions? (There were no questions from the board.) Is there anyone else on the waiting list to be heard? (There were no comments via Zoom from the public.) Alright, so let's have a...we're going to have a reserve decision on this. Let's have a reading... I move that we have a reserve decision, so let's have a vote; I'm sorry. Mr. Wittmeier seconded.

A motion was made by Mr. Gazzillo that the appeal be set for a reserve decision on June 11, 2020. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Mr. McLaughlin stated, we'll have a reserve decision for you at the next meeting, Mr. Butler. Mr. Butler stated, thank you, and thank you very much to the Chairman and the board for hearing this application. I just want to say that Carissa did an amazing job, over and above, keeping us informed of the board's activity and coordinating the Zoom conference. So, thank you, Carissa. Mr. McLaughlin replied, she always does. Mr. Butler stated, thank you.

**Appeal No. 2020-011 – Edward Densieski – 50 Linda Lane West, Riverhead – SCTM No. 600-16-3-27.1 – RA40 Zoning** - for variances and/or relief from Chapter 301 Section 9 A(1)(c) where proposed rear yard setback is 5' and proposed side yard setback is 11.2' and minimum required is 20'; and Section 11 where proposed impervious surface coverage is 42.7% and maximum permitted is 15%.

Edward Densieski, 50 Linda Lane West, Riverhead, was sworn in by the chairman. Mr. McLaughlin stated, you have the floor Mr. Densieski. What do you want to do here? Mr. Densieski stated, okay, first, I'd like to disclose that I'm the current Vice-chairman of the Planning Board, a former Town Board member, and a former Zoning Board of Appeals member...just for the record. Also, I would like to thank the members and the Planning staff for getting the wheels of government rolling again; I really do appreciate that. Right now, I've been fortunate enough to have a big shop at my father's house for most of my life, and my mom and dad have passed on and at some point the homestead's gonna be sold. So, I want to build a barn in my backyard. If you'd like, I could describe the project for you. Mr. McLaughlin stated, yeah, please. Mr. Densieski stated, it's a 30' x 40' pole barn with a 12' overhang on the eastern side of the property. It's kind of jammed in the best we could do because it's an odd-shaped lot; it's a six-sided lot. It was kind of laid out wrong when it was originally built, I guess. As far

as the amount of impervious surface, that's not really 100% accurate because there is a clay tennis court that is pervious. I think the Town Code deems it impervious, but it soaks up water like a sponge, so that number might not be 100% accurate. Mr. Wittmeier asked, Mr. Densieski, your rear property line abuts the Town of Riverhead recharge basin, right? Mr. Densieski replied, correct. Mr. Wittmeier added, so that's a good neighbor to have. Okay. Mr. Densieski added, all good neighbors up in Rolling Woods. Mr. McLaughlin stated, Phil Schmidt behind you? Mr. Densieski replied, it's the former Schmidt property; there's another owner there now. Mr. Barnes asked, have you spoken to any of your neighbors? Mr. Densieski responded, I just alerted them to what was going on, and I did notify them by mail. A couple asked me what we're doing, and I explained the project, but I'm here now to answer any questions that my neighbors or the board might have. As far as coloration, the sides are going to be gray like my house and a black roof, like my house. So, it should be relatively conforming with the residence. Mr. Wittmeier asked, it's not really gonna be visible from Linda Lane, is it? Mr. Densieski responded, not really. I mean, we have a fair amount of landscaping. It is down a hill. So I don't think it's gonna be a visual impact for the community. Mr. Barnes asked, do we have any of the neighbors in the waiting room? It doesn't appear that anyone in the neighborhood has called in, so it doesn't appear anybody's opposed to it. Mr. Densieski stated, okay, glad to hear that. Mr. McLaughlin asked, any of the board members have any questions? Mr. Wittmeier replied, no, I don't think so. I think he's done a good job with it. Mr. Densieski stated, thank you. Mr. McLaughlin asked, anyone else have any questions? Anyone in the audience have anything? (There were no further comments.)

A motion was made by Mr. Seabrook and seconded by Mr. Wittmeier that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Mr. Densieski stated, I really appreciate the help, and have a great day. Thank you. Mr. Wittmeier replied, thanks, Ed.

#### DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2020-011

SUMMARY: Accessory Structure with Overhang

APPLICANT/PROPERTY OWNER: Edward Densieski, 50 Linda Lane West, Riverhead, NY 11901

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 9 A(1)(c) where proposed rear yard setback is 5' and proposed side yard setback is 11.2' and minimum required is 20'; and Section 11 where proposed impervious surface coverage is 42.7% and maximum permitted is 15%.

LOCATION: 50 Linda Lane West, Riverhead

SCTM#: 600-16-2-27.1

ZONING DISTRICT: Residence A-40 (RA40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 40,351 sq. ft. or 0.926 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 feet; maximum impervious surface is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet; accessory in side yard setback is 20 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 50 feet.

DATE OF HEARING: 5/28/2020

INSPECTION DATES: 5/20/20, 5/23/20

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's environmental planner determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. Property received the following certificates of occupancy: (ZB10192) dated March 10, 1988 for single family residence with one car garage; (ZB10886) dated May 10, 1988 for tennis court; (ZB10666) dated August 10, 1988 for inground swimming pool; (ZB11465) dated August 10, 1988 for two level deck.
2. Application was made to the Building Department on February 24, 2020 to construct a 30' x 40' accessory building garage in rear yard.
3. A denial letter was sent from the Building Department on March 9, 2020 and an application was made to the Zoning Board of Appeals on March 11, 2020.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
  - a. The property is presently improved with the following structure(s):
    - i. Two-story frame house and garage
    - ii. Inground pool with wood deck
    - iii. Clay tennis court
    - iv. Slate walk with brick steps and landing
    - v. Wood shed (10.2' x 10.3') – to be relocated

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as proposed structure is customary to the residential use.
2. The requested variance is not substantial because the accessory garage is a common use in a residential community.
3. The benefit sought by the applicant cannot be achieved by some alternative means due to lot coverage and layout of structures on the subject parcel. Selected location is best orientation for proposed structure.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as no sewer connection is required and water runoff will be managed/contained on site.

5. The alleged difficulty that the property owner is experiencing was not self-created as dwelling and existing accessory structures were built by a previous owner in 1988; where structure is proposed is the only feasible location on the parcel.

The motion was made by Mr. Seabrook and seconded by Mr. Wittmeier, that the aforementioned determination be approved:

**THE VOTE**

**MR. SEABROOK: AYE MR. BARNES: AYE**  
**MR. GAZZILLO: AYE MR. WITTMEIER: AYE**  
**MR. McLAUGHLIN: AYE**

**This determination X was    was not  
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

**NO CONDITIONS**

**Minutes of March 12, 2020** – A motion was made by Mr. McLaughlin and seconded by Mr. Wittmeier that the minutes be adopted. The motion was approved by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

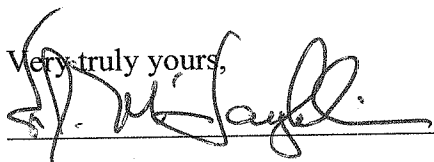
**NEXT MEETING DATE** – June 11, 2020 at 7:00 PM

Mr. McLaughlin stated, I would like to thank everyone for coming out tonight, and do I hear a motion to adjourn?

A motion to close the meeting was made by Mr. Wittmeier and seconded by Mr. Barnes. The meeting was closed by a roll call vote of all members present:

Mr. Barnes	AYE
Mr. Seabrook	AYE
Mr. Gazzillo	AYE
Mr. Wittmeier	AYE
Mr. McLaughlin	AYE

Approved and Dated: June 11, 2020

Very truly yours,  


Fred McLaughlin, Chairman  
ZONING BOARD OF APPEALS